

REMARKS

Claims 1-45, 47-56, 58-68, and 70-72 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

Oath/Declaration

Claims 1-45, 47-56, 58-68 and 70-72 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175. In particular, the Examiner alleges that the reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

A reissue declaration must contain a statement that the Applicant believes the original patent to be wholly or partly inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than patentee had the right to claim in the patent. (MPEP § 1414). Please note that Page 2, Lines 3-4 of Applicant's declaration states "I believe that the original above-identified U.S. patent is partially inoperative by reason of my having claimed less than I had the right to claim in that patent." As such, Applicant respectfully submits that this portion of the requirements for a reissue declaration is satisfied.

Further, as previously noted in the response filed September 18, 2007, a reissue declaration must contain a statement of at least one error which is relied upon to support the reissue application. (MPEP § 1414). Here again, please note that Page 2, Line 4 through Page 3, Line 3 states that a plurality of claims "contain a potential

ambiguity with reference to the antecedent basis” for various phrases. Applicant submits that modification of language intended to eliminate ambiguity is sufficient support for reissue.

Applicant respectfully notes that ambiguity and a lack of antecedent basis can render a claim invalid under 35 U.S.C. § 112, second paragraph. For example, the court in *In re Altenpohl*, 500 F.2d 1151 (C.C.P.A 1974), held that lack of antecedent basis in a claim is proper ground for reissue under 35 U.S.C. § 251:

lack of antecedent basis in a claim can render it invalid under 35 U.S.C. § 112, second paragraph, and correction of such a defect by issue should not have to depend on difference and scope of claim...a patentee should be allowed to correct an error or ambiguity in a claim without having to rely on implication or litigation. Accordingly, we hold that lack of antecedent basis in claim 11 is proper ground for reissue under 35 U.S.C. § 251. *Id.* at 1156-1157.

In the present declaration, Applicant clearly stated that the error in question is that one or more claims include a potential ambiguity due to improper antecedent basis.

In response, the Examiner alleges that Applicant “must state that the specific claim language is ambiguous (i.e., not a potentially ambiguity) and that he believes the ambiguity does render the claim invalid. Just because an ambiguity “can” render the claim invalid does not mean that it does render the claim invalid.” (See Page 2 of the present Office Action).

Applicant respectfully disagrees. Initially, please note that the phrase “can render it invalid” is a direct quotation from the above cited case, which held that lack of antecedent basis in a claim can render it invalid, and that a patentee should be allowed to correct an error or ambiguity in a claim. The Examiner fails to cite any evidence in

support of the allegation that there is any meaningful distinction between identifying an ambiguity and identifying potential ambiguities.

Here again, a reissue declaration must contain a statement of at least one error. The present reissue declaration clearly identifies multiple errors in the claims that "contain a potential ambiguity with reference to the antecedent basis." The Examiner fails to provide any actual evidence that this language is insufficient in view of *In re Altenpohl*.

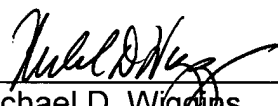
In view of the foregoing, Applicant respectfully asserts that the reissue declaration filed with this application is not defective

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: 2/15/08
MDW

By: 
Michael D. Wiggins
Reg. No. 34,754

Damian M. Aquino
Reg. No. 54,964

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

MDW/DMA/dms